

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
)

Annual Assessment of the Status of)
Competition in the Market for the)
Delivery of Video Programming)
)

MB Docket No. 06-189

Implementation of Section 621(a)(1) of the)
Cable Communications Policy Act of 1984)
as amended by the Cable Television)
Consumer Protection and Competition)
Act of 1992)
_____)

MB Docket No. 05-311

REPLY COMMENTS OF FAIRFAX COUNTY, VIRGINIA

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SUMMARY

Fairfax County, Virginia submits these reply comments to document the consumer impact of wireline competition in the market for video services. Fairfax County is served by three competitive wireline cable operators: incumbent cable operators, Comcast of Virginia, Inc., and Cox Communications of Northern Virginia, Inc., serve non-overlapping areas of the County; and Verizon Virginia Inc. (“Verizon VA”), serves the entire County. Fairfax County is one of the largest jurisdictions to have granted a competitive wireline franchise to Verizon, and Verizon VA has been providing cable service for over one year in Fairfax County. Because of the willingness of both parties to meaningfully engage in negotiations, Fairfax County staff and Verizon VA were able to complete negotiation of a comprehensive draft franchise with all major terms and conditions in approximately seven weeks, and in just under three months, completed a draft franchise agreement for the Fairfax County Board of Supervisors’ consideration.

Reasonable build-out requirements have benefited Fairfax County consumers. Each of the County’s three franchises require providers to make service available to all homes in the franchise area within a reasonable period of time and the County Code requires providers to make service available to at least eighty-five percent of all households without line extension charges. Verizon VA was granted seven years to complete its build-out. Fairfax County staff estimates that Verizon VA is now capable of serving approximately one-third of all County households, and all County households will have a choice of two cable operators within the next six years. Reasonable build-out requirements serve the important public policy purpose of ensuring that competitive video service – and as well as its by-product, high-speed Internet access via cable modem – is made available to every household. It will be important for

consumers that local franchising authorities retain the power to ensure that competition for such services – and accompanying competitive pricing pressure – leaves no neighborhood behind.

The 2006 Virginia cable franchising legislation grandfathered protection for existing cable franchises where a competitive franchise has been granted, but also permits existing providers to opt into the applicable terms in their entity of any new competitive franchise granted by its local franchising authority. In some cases, new competitors may request an ordinance cable franchise instead of a negotiated cable franchise. However, Verizon reports that it has continued to negotiate franchises since the new Virginia law took effect. Verizon reports that it negotiated two additional franchises in the six months since the new legislation took effect. Overall, the 2006 Virginia legislation has not yet significantly increased the rate of competitive cable system deployment in Virginia.

Fairfax County responds herein to arguments by some commentors that competition leads to lower pricing, and therefore any regulations perceived to delay competitive entry – including local franchising in particular – should be radically altered. Fairfax County provides non-promotional rates offered by Fairfax County cable operators for 2004, 2005, 2006 and 2007, to provide the Commission with more complete rate information. Rate data submitted by other commentors in this proceeding include unpublished temporary promotional prices and promotional prices available only to new subscribers, and thus do not reflect actually monthly cable rates paid by the majority of subscribers.

Wireline competition for video services in Fairfax County is still in the nascent stage and any conclusions drawn are preliminary in nature. A choice of competitive cable systems is still not available to the majority of County households. Therefore, Fairfax County cannot definitively determine what impact competition is having on cable service pricing. It is difficult

to compare digital cable and bundled service packages between providers because of the differences between each providers' package content. It is unclear how much, if any, of the applicable bundled service package discounts are attributable to competitive forces in the marketplace, or to generally accepted industry practices (which occur in both noncompetitive and competitive markets) to provide discounts to bundled services. Incumbent providers appear to be responding to competition by offering promotional discounts to new subscribers or by reducing some features in bundled packages so as to offer lower-priced bundled packages and match the competitor's bundled rate. But it also appears that in Fairfax County, the competitive entrant is offering consumers a stand alone cable package with a larger number of channels at a price point similar to the incumbent's rates. All cable operators have increased their rates since January 2006 and cable rates have risen at a faster rate as compared to when no head-to-head wireline cable competition existed in the County. Because the most recent cable pricing data released by the Commission analyzes cable rates as of January 1, 2005 (as contained in the *2005 Cable Price Report*) and wireline cable competition in Fairfax County began in November 2005, Fairfax County is unable to determine whether competition has caused monthly cable rates in the County to grow at a slower rate than in franchise areas without wireline cable competition.

As a consumer protection issue, Fairfax County notes that converter boxes account for almost eight percent of analog monthly cable rates (expanded basic service plus converter and remote control costs) and more than seven percent of mid-sized digital monthly cable rates (Verizon VA's expanded basic, Comcast VA's Digital Plus, and or Cox VA's Digital Gateway, Digital Discovery, and Digital Variety Tiers; plus digital converter box and remote control). Fairfax County urges the Commission to complete its implementation of the provisions of the 1996 Telecommunications Act that would enable consumers to purchase commercially available

converter boxes capable of receiving all programming, including interactive electronic program guides and video-on-demand services. The County also urges the Commission to complete implementation of the provisions of the 1996 Telecommunications Act that would permit subscribers to view all cable programming, including premium channels, without converter boxes so that consumers may fully utilize the advanced features of the their televisions, including picture-in-picture features.

The County also reports that each month, Fairfax County public, educational, and governmental access channels provide 1,691 hours of locally-originated programming, 301 hours of foreign language programming, and 976 hours of closed-captioned programming. The County also highlights important public safety considerations and technical information regarding the functional differences in operation of local emergency overrides on cable systems with regionally-based cable system headends. Finally, Fairfax County provides the Commission with information about the County's recent consumer educational campaign, "Connecting Your Home," which provided consumers with information about the E-911 services and back-up battery considerations when choosing between traditional telephone service and voice-over-Internet-protocol telephone service.

The County provides the information herein to assist the Commission in developing a comprehensive report to Congress regarding the state of competition in the market for the delivery of video programming. The County also urges the Commission to recognize the important public policy goals that have been achieved through the local franchising process as the Commission deliberates issuing new franchising regulations in a related proceeding.

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REPLY COMMENTS OF FAIRFAX COUNTY, VIRGINIA

I. INTRODUCTION.

Fairfax County, Virginia (“Fairfax County” or “County”) submits the following reply comments in response to the Federal Communications Commission’s (“Commission”) Notice of Inquiry, *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189 (2006) (“Notice”), in response to comments filed in this proceeding on behalf of Comcast Corporation (“Comcast”), the Fiber-To-The-Home Council (“FTTH Council”), the National Cable & Telecommunications Association (“NCTA”), Verizon,¹ and as an update to comments filed on February 13, 2005 on behalf of the

¹ Respectively, “Comcast Comments,” “FTTH Council Comments,” “NCTA Comments,” and “Verizon Comments.” References herein to “Verizon Comments” or other claims alleged on behalf of “Verizon” refer to statements contained in comments filed in this proceeding on behalf of “Verizon” and references to Verizon VA refer to Verizon Virginia, Inc., which entered into a 2005 cable franchise agreement with Fairfax County. Fairfax County and Verizon VA enjoy a

County (“County Franchising NPRM Comments”) in response to the Commission’s Notice of Proposed Rulemaking, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, MB Docket No. 05-311 (2005) (“*Franchising NPRM*”).

The Fairfax County Board of Supervisors (the “Board”) is the local franchising authority for Fairfax County and has a long history of encouraging competition for video services in Fairfax County. The Board has never awarded an exclusive cable franchise. Twenty-four years ago, the Board awarded its first non-exclusive cable franchise to Media General Cable of Fairfax County, Inc. (“Media General”), to serve the North County and South County franchise areas, followed by the award of a non-exclusive franchise for the Reston franchise area in 1988 to Warner Cable Communications of Reston, Inc. (“Warner”).² Four years later, in 1992, federal law was enacted to prohibit the award of exclusive cable franchises,³ *i.e.*, addressing an issue that did not and has never existed in Fairfax County. The non-exclusive, non-overlapping Media General and Warner franchises were ultimately transferred to Cox Communications Northern Virginia (“Cox VA”) and Comcast of Virginia, Inc. (“Comcast VA”), respectively. The Board

positive working relationship focused on ensuring the highest public safety during system construction and fostering the best possible customer service for all County residents. Similarly, references herein to “Comcast” refer to comments filed in this proceeding on behalf of Comcast Corporation and Comcast Cable Communications, LLC (collectively “Comcast”) whereas references to Comcast VA refer to obligations agreed to and performance under the 1998 and 2005 franchise agreements between Fairfax County and Comcast of Virginia, Inc. Fairfax County enjoys similarly positive working relationships with Comcast VA and Cox VA.

² “Cable Television Franchise Agreement Between Fairfax County, Virginia and Media General Cable of Fairfax County, Inc., September 30, 1982,” *available upon request*. “Franchise Agreement Dated May 16, 1988, Between the Board of Supervisors of Fairfax County, Virginia, and Warner Cable Communications of Reston, Inc.,” *available upon request*.

³ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 12, 106 Stat. 1460 (1992) (“1992 Cable Act”).

granted a non-exclusive renewal cable franchise to Media General in 1998 (now held by Cox VA), and a non-exclusive renewal cable franchise to Comcast VA in May 2005.⁴

Recognizing that competition would likely follow the enactment of the Telecommunications Act of 1996, the Board specifically structured the terms of the 1998 Media General renewal franchise agreement to ensure that its provisions could be replicated in a competitively neutral manner if wireline competition for delivery of video programming developed.⁵ As outlined in greater detail in the County's Franchising NPRM comments, because of the foresight of the Board and the willingness of both parties to negotiate, in 2005, Fairfax County staff and Verizon Virginia Inc., ("Verizon VA") were able to complete negotiation of a comprehensive draft with all major terms and conditions in approximately seven weeks and, in just under three months, completed a draft franchise agreement for the Board's consideration.⁶ Notably, the incumbent cable operators Cox and Comcast testified in a public hearing in favor of the award of a franchise to Verizon VA, stating that the Verizon VA franchise met the Virginia level playing field statute,⁷ and that they welcomed the competition the Verizon

⁴ "A Cable Franchise Agreement By and Between Fairfax County, Virginia and Comcast of Virginia, Inc." (2005) ("Comcast VA Franchise Agreement"); "A Cable Franchise Agreement By and Between Fairfax County, Virginia and Media General Cable of Fairfax County, Inc." (1998), transferred to Cox Communications of Northern Virginia, Inc. on September 23, 2002 ("MCG Franchise Agreement" or "Cox VA Franchise Agreement"). All current Fairfax County cable franchise agreements are available at http://www.fairfaxcounty.gov/cable/regulation/cable_franchises.htm.

⁵ The majority of wireline cable systems occupy and utilize the public rights-of-way to deliver service and thus require a cable franchise. 47 U.S.C. §§ 541(b)(1) and 522(7).

⁶ See County Franchising NPRM Comments at 4-6.

⁷ Va. Code Ann. § 15.2-2108(C) [repealed]. Section 15.2-2108(C) barred localities from granting a competitive franchise "on terms or conditions more favorable or less burdensome than those in any existing ... franchise..." and was replaced by Va. Code Ann. § 15.2-2108.20(B) (2006), which provides that a locality cannot regulate cable operators through the adoption or ordinances or regulations: (1) that are more onerous than ordinances or regulations adopted for

VA franchise would bring to Fairfax County.⁸ The Board unanimously approved the Verizon VA Franchise Agreement on September 26, 2005, with an effective date of October 1, 2005,⁹ and Verizon VA began to offer competitive cable service in Fairfax County in November 2005.¹⁰

The Board's award of a competitive County-wide cable franchise enabled Verizon VA to provide head-to-head competition against the incumbent cable operators in all three franchise areas within the County. At the time, the County, with more than 377,000 households, was the largest jurisdiction to award a franchise to Verizon.¹¹ As discussed further herein, Fairfax County granted a competitive franchise to Verizon VA some five months prior to the Virginia state legislature's decision to limit the ability of local governments to negotiate franchise terms and conditions in the belief that such actions would speed cable deployment. At the present time, there is little evidence to suggest that the new Virginia state cable franchise legislation has increased market entry by competitive cable providers.

Fairfax County's three franchise agreements guarantee that deployment of competitive cable services and any upgrades of existing cable systems will be made available to all

existing cable operators; (b) that unreasonably prejudice or disadvantage any cable operator, whether existing or new... .

⁸ County Franchising NPRM Comments at 6.

⁹ "Cable Franchise Agreement By and Between Fairfax County, Virginia and Verizon Virginia Inc. (2005)" ("Verizon VA Franchise Agreement"), available at http://www.fairfaxcounty.gov/cable/regulation/franchise/verizon/verizon_franchise_2005.pdf.

¹⁰ Fairfax County Franchising NPRM Comments at 7.

¹¹ *Verizon Wins Franchise for FiOSTV From Fairfax County*, TVover.net (September 28, 2005), available at <http://www.tvover.net/2005/09/28/Verizon+Wins+Franchise+For+FiOS+TV+From+Fairfax+County.aspx>. The Fairfax County Department of Systems Management for Human Services reported that there were 378,639 total units in the Fairfax County housing unit inventory and estimated that there would be 384,683 housing units by 2005. "Housing Unit Inventory by Unit Type by Planning District – Fairfax County, January 2004," available at <http://www.fairfaxcounty.gov/demogrph/demrpts/hupd.pdf>; "Historical, Estimated and

households within a franchise area. All franchised cable operators in Fairfax County must make cable service available to all households within the County, and without line extension charges to eighty-five percent of all households.¹² Congress and the Commission should consider to what extent new federal action, combined with existing state reciprocity and level playing field statutes, could eviscerate voluntarily negotiated build-out provisions in existing franchises.

Verizon VA has another six years to fully build out its cable system in Fairfax County, but the County has now had a full year to evaluate the impact of competitive franchised cable service, and therefore submits the information contained herein to the Commission so that the Commission may develop an accurate report to Congress regarding the status of competition in the market for the delivery of video programming. Overall, cable operators in Fairfax County have discounted prices for bundled video-broadband-telephone services. In some cases, long term contracts are required to obtain discounted prices, but in other cases, cable operators have replaced limited promotional rate offers with similarly priced rate offers that do not expire. However, despite increased competition, stand alone cable rates continue to rise, and every cable operator, including Verizon VA after one year of offering service, has announced a cable rate increase since January 1, 2006.

Finally, Fairfax County submits information to the Commission regarding the substantial amount of local and foreign language programming produced and distributed over the County's public, educational, and governmental access channels, as well as the technical issues associated with Emergency Alert System and Emergency Message System capabilities and battery back-up systems for cable telephony phone service.

Forecasted Housing Units by Planning District – Fairfax County, January 2004,” available at <http://www.fairfaxcounty.gov/demogrph/demrpts/hufpd.pdf>.

¹² Fairfax County Code Section 9.1-7-2.

II. FRANCHISE BUILD-OUT REQUIREMENTS BENEFIT CONSUMERS.

As the local franchising authority for all of Fairfax County, the Fairfax County Board of Supervisors has an obligation to ensure that the benefits of competition are made available to all County residents. Nonetheless (and contrary to Verizon's generalized intimations¹³), the Board has balanced its obligations to serve all residents with the economic and technical feasibilities of build-out when negotiating build-out requirements in franchise agreements. Fairfax County disagrees with Verizon that a franchise agreement requirement to build-out an entire franchise area over a reasonable number of years is either unduly "burdensome," "tantamount to [an] 'unreasonabl[e] refus[al] to award' competitive franchises," or that authority to negotiate such provisions "should be prohibited."¹⁴ The Board has permitted new entrants to begin immediately providing service as soon as their systems become capable; permitted the operator to define the boundaries of a initial service area, *i.e.*, a limited geographic area of the County in which build-out must be completed within three years; and granted the operator up to seven years to complete its build-out throughout the County. Furthermore, the Board has also agreed to permit cable operators to recover line extension costs where there are fewer than 30 to 35 occupied homes per line mile.¹⁵ The requirement that a competitive provider should be able to make service available to an entire franchise area by the mid-point of the franchise term is inherently reasonable; it would be inherently unreasonable for the Commission to attempt the prohibit the

¹³ See Verizon Comments at 17.

¹⁴ Verizon Comments at 17.

¹⁵ Verizon VA Franchise Agreement at Section 3.1; Comcast VA Franchise Agreement at Appendix 1; Media General Cable Franchise Agreement at Appendix 1.

County from ensuring that benefits of competition and digital cable systems reach all County households.¹⁶

The core of the argument against build-out requirements is that competition need not reach all residents; that it is “simply unnecessary” to require that service be made available to every household.¹⁷ Fairfax County could not disagree more. Reasonable build-out requirements have not only ensured that video service reaches almost every home in America, but because those same reasonable build-out requirements also applied to system upgrades, reasonable local franchise build-out requirements have also ensured that advanced services delivered over cable systems, including cable modem, have continued to reach almost every home in America. Three years after enactment of the 1992 Cable Act, the Commission reported in its *Third Annual Report* to Congress that, “at year end 1995, cable service was available to 92.7 million homes or approximately 96.7% of all television households in the United States.”¹⁸ In the Commission’s most recent *Twelfth Annual Report*, the Commission reported that cable passed 108.6 million homes or 98.7% of homes with a television.¹⁹ Moreover, NCTA reported that by June 2006, 97 million television households, 89%, were served by at least one cable system that offered high

¹⁶ Leslie Cauley, *FCC Hopes to Speed Phone Companies' Entry Into TV*, USA Today, Dec. 1, 2006 at B1. (“AT&T and Verizon are building advanced broadband networks so they can sell bundles of TV, voice, wireless and high-speed Internet services.”)

¹⁷ *The Communications Act: Hearings on S. 1822 Before the Senate Commerce Committee* (May 18, 1994) (Statement of Brian Roberts, President, Comcast Corporation), *cited with approval*, Verizon Comments at 16.

¹⁸ *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 11 FCC Rcd. 2060 (1996) at ¶ 13 (“*Third Annual Report*”), available at <http://www.fcc.gov/Bureaus/Cable/Reports/fcc96496.txt>.

¹⁹ *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, (2006) at n.30 and ¶ 30 (“*Twelfth Annual Report*”), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-11A1.doc.

definition television service.²⁰ By contrast, in June 2006, the Commission reported that nationwide, 93% of residential end users had access to cable modem service, whereas only 78% of residential end users had access to DSL service (which is not subject to build-out requirements).²¹ In Virginia, the disparity is even greater – 96% of all residential end users have access to cable modem, whereas only 67% have access to DSL.²² Applying this differential to the total households in Virginia and the nation, the cable system build-out requirements in local cable franchises have helped to ensure that broadband services have reached the estimated 838,009 Virginia households left behind by DSL and the 16.7 million U.S. housing units not served by DSL.²³

As video service providers continue to “enhance ...traditional cable offering” by “combin[ing] existing assets with innovative new technologies”²⁴ to deliver more content and a “‘triple play’ bundle of phone, high-speed cable Internet, and video services,”²⁵ it will remain important that local franchising authorities retain the power to ensure that competition for such

²⁰ NCTA Comments at 41.

²¹ Federal Communications Commission, *High Speed Services for Internet Access: Status as of December 31, 2005* (July 2006) at Table 14, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-266596A1.pdf.

²² *Id.*

²³ The U.S. Census Bureau estimated 2,889,688 occupied housing units in Virginia in 2005. http://factfinder.census.gov/servlet/ACSSAFFacts?_event=Search&_lang=en&_sse=on&geo_id=04000US51&_state=04000US51. The approximate number of Virginia households with access to cable modem but without access to DSL was calculated by subtracting from the percentage of premises with cable modem access, the percentage of premises with DSL access, and then multiplying by the number of occupied housing units $((.96 - .67) \times 2,889,688)$. Nationally, the Commission reports there are 111.4 million occupied housing units, Notice at n.30, *i.e.*, $((.93 - .78) \times 111,400,000)$.

²⁴ Comcast Comments at 60.

²⁵ *Id.* at 71.

services – and accompanying competitive pricing pressure – will reach every household and that the information super highway leaves no neighborhood behind.

III. BUNDLED SERVICE AND STAND ALONE CABLE PRICING IN FAIRFAX COUNTY.

In 2005, Fairfax County staff and the Consumer Protection Commission²⁶ recommended that the Board approve the Verizon VA Franchise Agreement. The franchise agreement was consistent with the Board's policy of supporting competition and competitive choice for consumers, and the terms of the franchise agreement ensured that any benefits of competition, including potentially lower prices, would be made available to all residents of the County because of the build-out requirements.²⁷ As part of its recommendation for approval, Fairfax County staff further reported to the Board that the General Accounting Office (now the Government Accountability Office), in its 2003 report, "*Issues Related to Competition and Subscriber Rates in the Cable Television Industry*," had reported that cable prices were as much as 15% lower in areas in which incumbent cable operators faced head-to-head competition from another wireline cable service provider.²⁸ After considering the terms of the franchise agreement and forecasted cost and service benefits for all residents, the Board unanimously approved the Verizon VA Franchise Agreement on September 26, 2005, with an effective date of October 1,

²⁶ The mission of the Fairfax County Consumer Protection Commission is to help protect Fairfax County consumers from illegal, fraudulent or deceptive consumer practices in the marketplace, and to advise the Board of Supervisors on issues regarding consumer affairs and cable communications. For more information, see http://www.fairfaxcounty.gov/consumer/consumer_protection_comm.htm.

²⁷ Fairfax County Franchising NPRM Comments at 8.

²⁸ *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, General Accounting Office Report 04-8 (2003) at 3, available at <http://www.gao.gov/new.items/d048.pdf>.

2005, and Verizon VA began to offer competitive cable service in Fairfax County in November 2005.

Wireline competition for video services in Fairfax County is still in the nascent stage and any conclusions drawn are preliminary in nature. It appears that incumbent providers are responding to competition by offering promotional discounts to new subscribers and lower-priced bundled packages with more limited features to match the competitor's bundled rate. However, it is difficult to compare digital cable and bundled service packages between providers because of the differences between each providers' package content. In addition, more research is needed to determine what impact bundled service options have on consumer freedom to mix and match video, high-speed Internet, and telephone service options between providers, including any issues associated with the lack of portability of provider-based e-mail addresses.

At this time, Fairfax County is unable to determine whether competition has caused monthly cable rates in the County to grow at a slower rate than in franchise areas without wireline cable competition, because the most recent cable pricing data released by the Commission analyzes cable prices as of January 1, 2005,²⁹ and wireline competition in Fairfax County began in November 2005. It appears that in Fairfax County the competitive entrant is now offering consumers a stand alone cable package with a larger number of channels at a price point similar to the incumbents' rates. Fairfax County will continue to analyze pricing data as it becomes available.

²⁹ *In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266 (Dec. 27, 2006) ("2005 Cable Price Report") available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-179A1.doc.

A. Bundled Cable Service Prices in Fairfax County.

1. Analysis of Bundled Cable Service Rates.

Comparisons of bundled cable service rates are difficult because providers do not offer identical service packages. Rather than attempting to force a comparison of different bundled service packages between providers, Fairfax County presents the following information comparing each provider's bundled packages with the price if similar services were purchased separately from that same provider. Most but not all of the bundled service offerings offered by the franchised providers suggest price discounts for services in a bundled package versus if provided separately. However, it is unclear how much if any of the applicable bundle service package discounts are attributable to competitive forces in the marketplace, or to generally accepted industry practices (which occur in both noncompetitive and competitive markets) to provide discounts to bundled services.

a. Cox VA Bundled Service Packages.

In January 2007, Cox VA will offer three bundled service packages.³⁰

COX VA BUNDLED PACKAGE COMPARISON

<u>"Value" Bundle</u>	<u>"Preferred" Bundle</u>	<u>"Value Plus" Bundle</u>
Expanded Basic	Expanded Basic	Expanded Basic
Cox High Speed Internet Value (768 Kbps download)	Digital Gateway	Cox High Speed Internet Preferred (5 Mbps download)
Primary Telephone Line	One Digital Tier	Cox Connections Unlimited
	Digital Receiver	(Unlimited local and long distance, caller ID, call waiting, voice mail)
	Cox High Speed Internet Preferred (5 Mbps download)	
	Primary Telephone Line	
<u>Additional Equipment Costs</u>	<u>Additional Equipment Costs</u>	<u>Additional Equipment Costs</u>
Converter Box & Remote	Converter Box & Remote	Converter Box & Remote
Cable Modem	(Unbundled Service Only)	Cable Modem
	Cable Modem	

³⁰ Attachment A – 2, Cox 2006 Annual Customer Notice – Prices Effective November 1, 2006.

COX VA BUNDLED PACKAGE COMPARISON

<u>“Value” Package</u>	<u>“Preferred” Package</u>	<u>“Value Plus” Package</u>
Purchased Separately: \$ 102.87	Purchased Separately: \$ 126.82	Purchased Separately: \$ 154.92
Purchased as Bundled Package: \$ 96.98	Purchased as Bundled Package: \$ 114.99	Purchased as Bundled Package: \$ 133.98
Bundled Savings:	Bundled Savings:	Bundled Savings:
\$ 5.89 / 5.73%	\$ 11.83 / 9.33%	\$ 20.94 / 13.52%

The lowest priced Cox VA Value Bundle package does not include digital programming, would require a separate analog receiver rental fee, and provides an Internet connection that, while at the lower threshold of broadband service, is comparable to DSL speed.³¹ This package may have appeal to consumers who have minimum video, Internet and telephone needs. Cox VA’s Preferred Bundled package is the only Cox VA bundle that offers digital video programming. Finally, the Value Plus package offers the greatest bundling discount, saving consumers over thirteen percent.

This package is comparably priced to match Verizon VA’s standard bundled package – both the Cox VA and Verizon VA bundled package offer unlimited long distance and local calling and Internet download speeds of up to 5 Mbps, and both require an additional equipment rental charge – but the Cox VA Value Plus Bundle does not offer digital programming and the consumer would have to pay an additional \$10.95 to receive digital programming comparable to the Verizon VA bundled package.³²

³¹ In advertisements, Cox VA states that Internet service requires a cable modem but offers a free cable modem to new subscribers while supplies last. Attachment A – 1, Cox Connections Bundle Advertisement (offer ends January 8, 2007).

³² Attachment A – 2, Cox 2006 Annual Customer Notice – Prices Effective November 1, 2006; Attachment C – 7, Verizon FiOS TV Channel Line Up, Fairfax County/Falls Church/Herndon Channel Lineup (1/06).

b. *Comcast VA Bundled Service Packages.*

Comcast VA offers discounts on its high-speed Internet service when bundled with analog or digital cable programming packages and also offers discounts on its Voice-over-Internet-protocol (“VoIP”) telephone service when bundled with either cable or Internet services. However, Comcast VA does not advertise prices for its triple play bundle packages on its rate card.³³ Comcast VA does offer its cable subscribers a \$15.00 discount on the purchase of its 6Mbps/768Kbps or 16Mbps/1Mbps high-speed Internet service. Based on telephone conversations with Comcast VA’s customer service representatives, if an existing Comcast VA customer would like to purchase Comcast VA’s unlimited local and long distance VoIP telephone service, Comcast will discount the regular \$57.95 rate to \$39.95.

COMCAST VA SAMPLE BUNDLED PACKAGE COMPARISON

<u>Analog Bundle</u>	<u>Digital Bundle</u>	<u>Fastest High Speed Bundle</u>
Full Basic	Full Basic	Full Basic
High Speed Internet (6 Mbps download)	Digital Plus High Speed Internet (6 Mbps download)	Digital Plus Highest Speed Internet (16 Mbps download)
Digital Voice (Unlimited local and long distance, caller ID, call waiting, on-line voice mail)	Digital Voice (Unlimited local and long distance, caller ID, call waiting, on-line voice mail)	Digital Voice (Unlimited local and long distance, caller ID, call waiting, on-line voice mail)
<u>Additional Equipment Costs</u>	<u>Additional Equipment Costs</u>	<u>Additional Equipment Costs</u>
Digital Converter Box & Remote Cable Modem	Digital Converter Box & Remote Cable Modem	Digital Converter Box & Remote Cable Modem
<u>Analog Package</u>	<u>Digital Package</u>	<u>Fastest High Speed Package</u>
Purchased Separately: \$ 173.52	Purchased Separately: \$ 188.47	Purchased Separately: \$ 198.47
Purchased as Bundled Package: \$ 140.52	Purchased as Bundled Package: \$ 155.47	Purchased as Bundled Package: \$ 165.47
Bundled Savings: \$ 33.00 / 19.02%	Bundled Savings: \$ 33.00 / 17.51%	Bundled Savings: \$ 33.00 / 16.63%

³³ Attachment B – 3, Comcast Reston Rates, Service Charges & Channel Lineup – Effective 10/06.

The Comcast VA video package most comparable to Verizon VA's standard video packages is Comcast VA's Digital Plus package. However, the Comcast VA package includes several premium (commercial free) Encore movie channels and the Sundance channel that are only available at additional cost from Verizon VA. Thus it is difficult to compare Comcast VA's video programming bundled rate component with either Verizon VA or Cox VA's packages because Comcast VA offers additional Premium channels in its bundling offers.³⁴

c. *Verizon VA Bundled Service Packages.*

Verizon VA entered the market with an all digital fiber optic network, whereas Cox VA and Comcast VA have upgraded their systems to create hybrid coaxial fiber systems. Thus, Verizon VA offers only a digital tier package and does not offer smaller channel packages equivalent to the analog packages offered by Cox VA and Comcast VA. In comparing all three providers' expanded basic tier packages, Verizon VA's expanded basic, now named FiOS Premium, is equivalent to Cox VA's Digital Gateway plus Digital Discovery and Digital Variety packages and Comcast VA's Digital Plus package (albeit, Comcast VA's Digital Plus package includes several premium movie channels available for an additional fee to Verizon VA subscribers).³⁵

³⁴ *Id.*

³⁵ Attachment C – 7 Verizon FiOS TV Channel Line Up, Fairfax County/Falls Church/Herndon Channel Lineup (1/06); Attachment A-2, Cox 2006 Annual Customer Notice – Prices Effective November 1, 2006; Attachment B-2, Comcast Reston Rates, Service Charges & Channel Lineup – Effective 10/06.

VERIZON VA SAMPLE BUNDLED PACKAGE COMPARISON

<u>Local Phone Bundle</u>	<u>Unlimited L/D Bundle</u>	<u>Fastest High Speed Bundle</u>
FiOS Premium	FiOS Premium	FiOS Premium
FiOS Internet (5 Mbps download)	FiOS Internet (5 Mbps download)	Fastest FiOS Internet (15 Mbps download)
Unlimited Local	Verizon Freedom Value (Unlimited local and long distance)	Verizon Essentials (Unlimited local and long distance, caller ID, call waiting, and voice mail)
<u>Additional Equipment Costs</u>	<u>Additional Equipment Costs</u>	<u>Additional Equipment Costs</u>
Digital Converter Box & Remote	Digital Converter Box & Remote	Digital Converter Box & Remote
<u>Local Phone FiOS Package</u>	<u>FiOS Freedom Value Package</u>	<u>FiOS Essentials Package</u>
Purchased Separately:	Purchased Separately:	Purchased Separately:
\$ 105.85	\$ 123.80	\$ 138.80
Purchased as Bundled Package:	Purchased as Bundled Package:	Purchased as Bundled Package:
\$ 100.85	\$ 118.80	\$ 133.80
Bundled Savings:	Bundled Savings:	Bundled Savings:
\$ 5.00 / 4.72%	\$ 5.00 / 4.04%	\$ 5.00 / 3.60%

Verizon VA recently announced that it would be increasing the prices of its FiOS Premium Package and Movie and Sports Tiers, effective January 22, 2007, for all new customers and new service additions, but also announced that it would drop its Existing Outlet Hookup initial installation charge from \$50.00 to no charge. Thus after January 22, 2007, Verizon sample package rates would be as follows:³⁶

VERIZON VA BUNDLED PACKAGE COMPARISON

As of January 22, 2007

<u>Local Phone FiOS Package</u>	<u>FiOS Freedom Value Package</u>	<u>FiOS Essentials Package</u>
Purchased Separately:	Purchased Separately:	Purchased Separately:
\$ 109.93	\$ 127.88	\$ 142.88
Purchased as Bundled Package:	Purchased as Bundled Package:	Purchased as Bundled Package:
\$ 104.93	\$ 122.88	\$ 137.88
Bundled Savings:	Bundled Savings:	Bundled Savings:
\$ 5.00 / 4.55%	\$ 5.00 / 3.91%	\$ 5.00 / 3.50%

³⁶ Attachment C – 3, Letter from Paul Miller, Franchise Service Manager, Verizon VA, to Director of Communications, Fairfax County, (Nov. 20, 2006), and Attachment C – 4, Verizon FiOS TV 2006 Annual Customer Notification: Programming and Equipment Rates – Effective January 14, 2006. On December 20, 2006, a Verizon VA representative informed the County that Verizon VA would delay implementation of its planned price increases from January 14, 2007 until January 22, 2007.

However, if service is cancelled between two and eleven months, an early termination fee of \$99.00 may apply. Verizon's digital service also requires rental of a digital converter box, which will increase in price from \$3.95 to \$4.99 effective January 14, 2006. Thus, after entering the Fairfax County market with an initial \$118.80 bundled service and equipment rate, in under fourteen months, Verizon will have increased its bundled service and equipment package rate by 3.43% to \$122.88.³⁷

2. Comparisons of Bundled Service Rates Adjusted for Promotional Offers Do Not Provide a Meaningful Picture of Long Term Pricing.

The County notes that the Bank of America Equity Research report cited as support for FTTH Council arguments that cable operators have dropped their bundled service package prices "by over 20%" as a result of Verizon's entry into the market,³⁸ is based on the inclusion of unpublished promotional prices. Bank of America itself stated that its bundled price comparisons reflect the value of temporary price promotions and unpublicized offers provided over the telephone by customer service representatives and do not reflect long term prices:

As we wrote last quarter, we note that these are in many cases un-advertised offers and we believe that they do not necessarily represent the equilibrium pricing that will prevail longer term in these markets. Some organizations have cited our report as evidence that competitive video entry by the Bells will substantially reduce cable prices. Since these are unadvertised prices, we would disagree with the assertion that these prices represent a snapshot of potential future equilibrium pricing.³⁹

³⁷ Verizon also offered an additional \$5.00 to \$10.00 initial promotional discount. See Attachment C – 6, FiOS Internet/Phone Advertisement (Expires 8/31/06), and Attachment C – 5, FiOS Video/Internet/Phone Advertisement (Expires 12/31/06).

³⁸ FTTH Council Comments at 11-12.

³⁹ Bank of America Equity Research, *Battle for the Bundle: Consumer Wireline Services Pricing*, April 18, 2006, at 18. Available upon request.

Therefore, data reported in the Bank of America report should not be used as evidence that future bundled service rates will decrease as competition enters the market.

3. The Commission Should Examine the Consumer Impact of Bundled Service Packages.

Finally, the County also asks the Commission to investigate how the bundling of services affects consumer choice among providers and service packages. As NCTA notes, Internet speed matters less to “those who use the Internet mainly for sending e-mail and reading online newspapers and blogs.”⁴⁰ To what extent are consumers required to purchase additional Internet services to receive pricing discounts on video services? To what extent are consumers required to pay higher Internet prices if they do not agree to also purchase video services?⁴¹ To what extent are providers pricing stand alone services at higher prices to encourage consumers to purchase bundled services? These questions and other consumer-based inquiries should also be part of the Commission’s inquiry to determine the effect that head-to-head competition has had on bundled pricing of cable services.⁴²

B. Stand Alone Cable Rates in Fairfax County.

As discussed above, prior to the entry of Verizon VA, Fairfax County had two franchised wireline cable operators who did not compete against each other head-to-head. Fairfax County’s three non-overlapping cable franchise areas are North County, South County, and Reston.⁴³ Cox

⁴⁰ NCTA Comments at 42.

⁴¹ In Fairfax County, 78.1% of all households currently have some form of Internet access, but only 58.7% of households with an annual household income between \$50,000 and \$25,000, and 35.4% of households with an annual household income of less than \$25,000, have Internet access. *2000 Fairfax-Falls Church Community Assessment: General Overview* at p.3, available at http://www.fairfaxcounty.gov/demogrp/pdf/cas_overview.pdf.

⁴² See Notice at ¶ 7.

⁴³ Fairfax County Code Section 9.1-7-1.

VA and its predecessor have provided service in the North and South County franchise areas since 1982. Comcast VA and its predecessors have served Reston since 1988. Verizon VA has a franchise to serve all three franchise areas and began providing competitive service in November 2005. Thus, Fairfax County cable pricing data includes cable rates in a noncompetitive environment, prior to Verizon's market entry, and cable rates in a competitive environment. Fairfax County is also including data regarding providers' announced cable rates as of January 1, 2007, and rates effective January 22, 2007, for Verizon VA.

1. Fairfax County 2004 Stand Alone Cable Rates Are Consistent with Commission Reported National Average Cable Rates In Noncompetitive Franchise Areas.

In the *2004 Cable Price Report*, the Commission reported a national average monthly cable rate which included the cost of expanded basic tier programming service and converter box and remote control equipment.⁴⁴ The Commission also broke out and compared the average monthly cable rate in areas not subject to effective competition, denoted as "Noncompetitive Areas," and the average monthly cable rate in areas subject to effective competition, denoted as "Competitive Areas." In December 2006, the Commission released similar data for cable rates as of January 1, 2005 in the *2005 Cable Price Report*. Fairfax County urges the Commission to complete its work on the 2006 Cable Price Report and to release data regarding cable prices as of January 1, 2006, and January 1, 2007, as soon as possible.

On January 1, 2004, the monthly cable rate charged by Fairfax County's largest incumbent cable operator was slightly more than the national monthly competitive rate reported

⁴⁴ *In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992, Statistical Report on Average Rates for Basic Service, Cable Programming Service, and Equipment*, MM Docket No. 92-266 (Feb. 4, 2005) at Table 1 ("2004 Cable Price Report").

by the Commission but substantially less than the national monthly noncompetitive rate reported by the Commission in the *2004 Cable Price Report*. However, on January 1, 2004, the monthly cable rate charged by Fairfax County's smaller incumbent cable operator was more than the national noncompetitive rate reported by the Commission. By January 1, 2005, Fairfax County largest incumbent had raised its monthly cable rate by two percent while the County's smaller incumbent had not raised its rate. But in comparison to the national monthly cable rate data reported by Commission in the *2005 Cable Price Report*, on January 1, 2005, Fairfax County's largest incumbent charged less than the both the national competitive and noncompetitive rates, and the County's smaller incumbent charged slightly less than the national noncompetitive rate.

Table 1 FCC Reported National Average Monthly Cable Rates As Compared To Fairfax County Monthly Cable Rates Jan. 2004					
Service Elements	FCC Average ⁱ	FCC Competitive ⁱⁱ	FCC Noncompetitive ⁱⁱⁱ	Cox VA ^{iv}	Comcast VA ^v
	Jan. 1, 2004	Jan. 1, 2004	Jan. 1, 2004	Jan. 1, 2004	Jan. 1, 2004
Basic Service	\$ 13.80	\$ 14.58	\$ 13.73	\$ 12.70	\$ 13.45
Expanded Basic (includes Basic)^{vi}	\$ 41.04	\$ 38.17	\$ 41.29	\$ 40.40	\$ 44.85
Converter & Remote Control	\$ 4.28	\$ 4.31	\$ 4.27	\$ 2.61	\$ 2.59
Monthly Cable Rate^{vii}	\$ 45.32	\$ 42.48	\$ 45.56	\$ 43.01	\$ 47.44

ⁱ *2004 Cable Price Report* at Table 1.

ⁱⁱ *2004 Cable Price Report* at Table 3. Competitive rates are derived from communities in which the FCC has made a finding of effective competition.

ⁱⁱⁱ *2004 Cable Price Report* at Table 3. Noncompetitive rates are derived from communities in which the FCC has not made a finding of effective competition.

^{iv} Cox 2003 Annual Customer Notice – Prices Effective November 1, 2003.⁴⁵

^v Comcast FCC Form 1240 at Worksheet 8 - True-Up Rate Charged contains information for 12/01/03 to 11/30/04 (filed Nov. 29, 2004).⁴⁶ (Comcast Channel Lineup & Rates – Effective 1/04 lists the monthly rate for Expanded Basic as \$19.00. However, the FCC Form 1240 True-Up Rate is listed as \$13.45, and Comcast Channel Line-Up & Rates – Effective 8/03 and 10/04 list the Expanded Basic Rate as \$13.45, consistent with the True-Up Rate. Therefore, the 1/04 Channel Lineup & Rates is presumed to contain a typographical error.)⁴⁷

^{vi} "Expanded Basic" is the combined costs of the Basic and Expanded Basic Service programming tiers. Expanded Basic cannot be purchased separately.

^{vii} "Monthly Cable Rate" includes the cost of the Expanded Basic Service tier (in combination with the Basic Service Tier if the Basic Service Tier is sold separately), Analog Addressable Converter Box and Remote Control.

⁴⁵ Attachment A – 5.

⁴⁶ Attachments B – 6.

⁴⁷ See Attachments B – 5, B – 6, B – 8, B – 9 and B – 7.